
(2000) 12 MAD CK 0131

In the Madras High Court

Case No : L.P.A.No. 183 of 2000 and C.M.P.No. 18028 of 2000

Palani and 2 others

APPELLANT

Vs

The Commissioner, HR and CE, Administration Dept.,
Nungambakkam, Chennai-34 and 2 others

RESPONDENT

Date of Decision : 01-12-2000

Acts Referred:

Constitution of India, 1950 — Article 26

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 20, 23

Citation : (2000) 12 MAD CK 0131

Hon'ble Judges : K. Narayana Kurup, J;E. Padmanabhan, J

Bench : Division Bench

Advocate : Mr. W.C. Thiruvengadam, for the Appellant; Mrs. S. Mohd. Yousuf, Special Government Pleader assisted by Mr. T.R. Davesan, Government Advocate, for the Respondent

Judgement

K. Narayana Kurup, J.—Heard Mr.W.C. Thiruvengadam for the appellants and learned Government Advocate for the First respondent.

2. The plaintiffs are the appellants. Suit was one for declaration that Sri Athi Thuukkanathamman Temple situated at No. 143, Village Road, Nungambakkam, Chennai, is a denominational temple and for consequential injunction restraining the sole defendant from appointing trustees.

3. The defendant filed a written statement contending that the suit is not maintainable, that the suit/temple is not a denominational one, but open to all persons of Hindu religion and the claim of the appellants /Plaintiffs that the temple is intended exclusively for Adi Dravidas is devoid of truth. According to the defendant, all the members of the Hindu Community have a right to offer worship in the temple and the temple was not founded for the benefit of Adi Dravidas Community only. It is the further case of the defendant that the plaintiffs had collected funds from all sections of Hindu community and that it is within the right of the Assistant Commissioner to call for applications to appoint

trustees to the temple and hence, the plaintiffs are not entitled to the declaration as prayed for. It is further stated that even the Hundi collections comprised of contributions made by all the members of the Hindu community. The defendant would not admit that only the members of Adi Dravida community has been the trustees of the temple from 1958 onwards.

4. On the rival contentions, the trial court framed four issues. The evidence before the trial court consisted of the oral evidence of the plaintiffs as P.Ws.1 and 2 and documentary evidence as Exs.A.1 to A.7. On an appreciation of evidence, the trial court decreed the suit as prayed for. On appeal by the first respondent/defendant, learned single Judge of this Court, by the judgment impugned in this appeal, set aside the judgment and decree of the trial court and allowed the appeal. Hence, this letters patent appeal by the plaintiffs.

5. Learned counsel for the appellants/plaintiffs put forward the very same submissions he made before the learned single Judge in support of the proposition that the temple in question is a denominational temple, relying on the provisions of Article 26 of the Constitution of India, which provides that every religious denomination or any section thereof, shall have the right to establish and maintain institutions for religious and charitable purposes. The plaintiffs are seeking an order of injunction restraining the first respondent/defendant from appointing trustees in respect of the temple, as according to the appellants/plaintiffs, the Temple in question is a religious denomination. This argument is not open to the plaintiffs, as we find that the plaintiffs have already submitted to the jurisdiction of the first respondent on an earlier occasion, as seen from Ex.A.1, where, at the specific request of the appellants, as a matter of fact, a scheme has been framed under the Hindu Religious and Charitable Endowments Act and implemented. Therefore, the plaintiffs are estopped from contending to the contrary. We also find that the suit/Temple is of recent origin and is like any other Hindu Temple, where worship can be offered to the deity namely, God or Goddess. There is no special feature which distinguishes this Temple from any other temple belonging to Hindus. Even the averments in the plaint itself speak only about the community Temple and not a denominational temple. Paragraph 5 of the plaint reads that one Mr.Sivashanmugaham Pillai, Ex-Speaker of Madras Assembly, who happened to be in Kutty Street in Nungambakkam Village, was responsible for founding the institution for the sole benefit of the members of the Adi Dravidas residing in that street and Siva Shanmugam Street. Nowhere in the plaint, it is alleged that the suit/temple is a religious denominational one. Evidence also was let in by the plaintiffs only to prove the fact that the Temple was administered by the Adi Dravidas from out of the funds contributed by them and there was no contribution by any other community. Of course, this will prove that the maintenance and administration of the Temple as effected by Adi Dravidas of both Streets as stated in the plaint, if at all.

6. On the Materials added by the plaintiffs, we are of opinion that they have miserably failed to establish that the suit/temple is a religious denominational

one or established by any any religious denomination or any section thereof. If the test laid down by plethora decisions of the Supreme Court, as also the decision rendered by M. Srinivasan, J (as his Lordship then was) in The Assistant Commissioner, Hindu Religious and Charitable Endowment, Salem and Others Vs. Nattainai K.S. Ellappa Mudaliar and Others, in deciding the question as to whether a temple a religious denomination nature, is applied to the facts of the present case, it will be seen that the plaintiffs cannot, stretch of imagination, claim the suit temple to be a denomination here is absolutely on trace of evidence to prove that the members of the plaintiffs community have a common religious tenor faith peculiar to themselves other than those which are on to the entire Hindu Community. Of course, learned counsel for the appellants canvass before us the position that the view taken by the learned single Judge cannot be legally sustained. He also pressed into service certain decisions.

7. Having bestowed our anxious consideration to the contention put forward by learned counsel for the appellants and also the decisions brought to our notice, we are of opinion that the same will not in any way help to advance the case of the appellants. At any rate, no question of law, much less the substantial question of law arise for consideration and therefore this appeal is dismissed. No costs. Consequently, C.M.P.No. 18028 of 2000 is also dismissed.